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No. 115] **NEW DELHI, MONDAY, APRIL 16, 1956**

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 3rd April 1956

S.R.O. 885.—Whereas the election of Shri Syamala Seetaramayya, as a member of the Legislative Assembly of the State of Andhra, from the Bhadrachalam constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Karam Bapanna, Dora, resident of Jaggampalem, Gokavaram P. O., East Godavari District;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, ELURU

Wednesday, the 21st day of March 1956

PRESENT

Sri G. Nagreddy, B.A., B.L., *Chairman.*

Sri C. Narasimhacharyulu, B.A., M.L., *Member (Judicial).*

Sri M. Sitaramaiah, B.A., B.L., *Member (Advocate).*

ELECTION PETITION No. 5 of 1955

Between:

Sri Karam Bapanna Dora, son of Veeranna Dora, resident of Jaggampalem, Yellavaram Division, Gokavaram P.O., East Godavari District.—*Petitioner.*

And

1. Sri Syamala Seetharamayya, son of Ramayya, resident of Kommur village, Bhadrachalam Taluk, East Godavari District.

2. Sri Kondamodalu Ramireddi, son of Venkatareddi, resident of Ravi Lanka, Rampachodavaram Division, East Godavari District.—*Respondents.*

Petition dated 27-4-1955 under Section 81 of the Representation of People Act, 1951 to declare (1) that the 1st respondent is under 25 years of age and is not qualified to fill a seat in the Andhra Legislative Assembly and that his election at the election held on 27th February 1955 to the reserved seat of Bhadrachalam constituency is void and of no effect and (2) that the petitioner is duly elected to the said seat and for costs.

This Election Petition coming on for final hearing before this Tribunal on 13-3-1956, upon perusing the petition, counter and other material papers on record, upon hearing the arguments of Sri S. K. V. Krishnavataram, and Sri P. Subbarao, Advocates for the Petitioner, Sri P. V. Raghaviah, Advocate for the 1st respondent and the 2nd respondent being absent and set *ex parte* and having stood over to this day for consideration, the Tribunal delivered the following.

ORDER

This is a petition filed under Section 81 of the Representation of People Act questioning the validity of the election of the Returned candidate *viz.*, the 1st respondent to the seat reserved for the scheduled tribes of Bhadrachalam constituency in Andhra Legislative Assembly.

2. The allegations in the petition may be briefly stated as follows:—The petitioner and the two respondents filed nominations on 3rd January 1955 to contest the reserved seat for the scheduled tribes for the Bhadrachalam constituency in accordance with the notification dated 20th December 1954 made by the Governor of Andhra in the *Andhra Gazette* relating to the election of Members to the Andhra State Legislative Assembly. The petitioner questioned the nomination filed by the 1st respondent on the ground that the latter was under 25 years of age; that he was born on 30th April 1931 at Kommuru village and as such he was not qualified to be chosen or to fill a seat in the Legislative Assembly under Article 173(b) of the Constitution of India. On the date of scrutiny *viz.*, 7th January 1955, the Returning Officer over-ruled the objection taken by the petitioner and accepted the nominations of the first respondent as well as the petitioner and the 2nd respondent. The 2nd respondent withdrew his candidature for the election within the prescribed time. As a result of this the petitioner and the first respondent alone were the contesting candidates for the reserved seat for the scheduled tribes. The election took place on 27th February 1955. The first respondent secured 27,600 votes as against 12,400 votes secured by the petitioner. The first respondent was duly declared as elected. It is further alleged that one Murram Buchanna Dora published a notice in the Telugu Daily paper called "*Andhra Patrika*" on 11th February 1955 drawing the attention of the voters to the fact that the first respondent was under 25 years of age being born on 30th April 1931 and that he was not qualified to fill a seat in the Legislative Assembly; that all the voters that voted for the 1st respondent knew fully well that the first respondent was not qualified to fill a seat in the Legislative Assembly. Knowing this, they voted for the first respondent because they belonged to his political party and that therefore the votes cast in favour of the 1st respondent must be deemed to have been "thrown away"; that under the circumstances, the election of the 1st respondent should be declared void and the petitioner should be declared as the duly elected member of the said Legislative Assembly.

3. The 2nd respondent who is a proforma party remained *ex parte* and did not contest the petition.

4. The first respondent filed a counter in which he denied the allegations in the petition and contended that he was born in Koyida village, Palavancha taluk, Hyderabad State during the latter part of Fasli 1338 at his grandfather's house; that his mother remained in her father's house at Koyida for 2 years after his birth and then went to her husband's house at Mamillagudem, hamlet of Kommuru in Bhadrachalam taluk; that therefore the age of the respondent was above 25 years on the date of the filing of the nomination; that the electoral roll which was prepared in the year 1953 showed that the age of the respondent was 24 years in 1953 and therefore on the date of the nomination *viz.*, 3rd January 1955 the respondent must necessarily be above 25 years of age; that the register of births kept in Kommuru village is not a correct one and that the respondent was not born on 30th April 1931 at Kommuru. Therefore the respondent is not disqualified under Article 173(b) of the Constitution. It is further contended that this respondent as well as the voters that voted for him were not aware of the publication made by Sri Murram Buchanna Dora in the "*Andhra Patrika*" dated 11th February 1955; that the votes polled for this respondent cannot be

said to be "thrown away"; that even if the election of this respondent is set aside, the petitioner cannot be declared as duly elected member of the Andhra Legislative Assembly for the reserved seat of the Bhadrachalam constituency; that the petition is not in conformity with the provisions of Section 83 of the Representation of People Act and that the petition should be dismissed with costs.

5. The following issues were settled for determination:—

1. Whether the 1st respondent was not aged 25 years so as to qualify himself to contest the election?
2. Whether the acceptance of the nomination paper of the first respondent by the Returning Officer is final, valid and binding upon the petitioner?
3. Whether the petitioner can be declared to be duly elected?
4. Whether the election is materially affected?
5. To what relief is the petitioner entitled?

6. Before we deal with the individual issues, the admitted facts of this case and the circumstances leading up to this petition may be briefly narrated. The Governor of Andhra called upon the Assembly Constituencies in the State by a notification dated 20th December 1954 in the Official Gazette to elect members for the State Legislative Assembly. The Returning Officer for the Bhadrachalam Constituency published a programme of the election fixing the following dates; 3rd January 1955 for filing the nomination papers, 7th January 1955 for scrutiny of nomination papers, 10th January 1955 for withdrawal of the nomination and 27th February 1955 for holding the election. The Bhadrachalam constituency is a double member constituency, one seat being reserved for the Scheduled Tribes. Several persons filed nominations for both the seats and we are not concerned with the nominations filed for the general seat. The petitioner and the two respondents in this petition filed nominations for the reserved seat for the Scheduled Tribes on 3rd January 1955. Ex. A-1 is the nomination paper filed by the first respondent. In Ex. A-1 the first respondent declared that he was 26 years of age. In the body of the nomination paper in answer to question No. 9, he stated that his name is in the electoral roll of the Kommuru village bearing serial No. 385. The electoral roll of Kommuru village is marked as Ex. A-5 and serial No. 385 in this electoral roll is stated to be "Seetaramayya Syamala, son of Ramayya, male, age 24 years". This entry is separately marked as Ex. A-5(a). This voters list related to the year 1953 as is seen from the heading of the list which runs thus:—(Final voters list for the year 1953). On the date fixed for the scrutiny viz., 7th January 1955 the petitioner filed an objection before the Returning Officer under Ex. A-2 stating that the 1st respondent was not qualified to stand as a member for the Assembly as he was under-aged being born on 30th April 1931. The petitioner also filed an extract from the birth register of Kommuru village which is marked herein as Ex. A-3. Before filing the written objection under Ex. A-2 the petitioner appears to have taken an oral objection at 11-15 A.M. on 7th January 1955 when the nomination paper of the 1st respondent was taken up for scrutiny. At this time the petitioner did not file the extract from the birth register Ex. A-3 before the Returning Officer. The Returning Officer therefore over-ruled the oral objection taken by the petitioner on the ground that there was no evidence in support of the objection. He thereupon relied on the entries in the Electoral Roll referred to above. He found the age of the first respondent noted as 24 in the Electoral Roll. As the Electoral Roll was prepared in the year 1953, he drew an inference that the first respondent should be more than 25 years of age on 3rd January 1955 and therefore he accepted the nomination of the first respondent. After the nomination of the first respondent was accepted, the petitioner obtained the extract Ex. A-3 from the birth register at about 12-30 P.M. on the same day and filed a written objection under Ex. A-2. But the Returning Officer over-ruled this objection on the ground that he had already passed orders accepting the nomination of the first respondent. Ex. A-4 is the order passed by the Returning Officer. Along with the nomination paper of the 1st respondent, the nomination papers of the petitioner as well as the 2nd respondent were also accepted. The 2nd respondent however withdrew from the contest before the appointed time. Therefore the petitioner and the 1st respondent went to the polls as the only rival candidates for the reserved seat. The poll took place on 27th February 1955. The votes were counted from 4th March 1955 to 8th March 1955. The first respondent secured 27,600 valid votes as against 12,400 secured by the petitioner and the first respondent was declared elected to the reserved seat on 8th March, 1955. After the result of the election was notified and within the prescribed period, the petitioner sent this petition to the Election Commission,

India, and it was received in the office of the Election Commission on 30th April 1955. Later on the Election Commission constituted this Tribunal and sent this petition for disposal to this Tribunal.

7. *Issue 2.*—We will first take up this issue as it involves preliminary objections taken both by the petitioner and the 1st respondent. One of the contentions of the petitioner is that in the printed electoral roll of Kommuru village marked herein as Ex. A-5, the age of the 1st respondent is shown as 24 years and that this entry is conclusive proof of the age of the 1st respondent and as such he was not 25 years of age on the date of the filing of the nomination. As stated above, this electoral roll was prepared in the year 1953 and the age of the first respondent is shown as 24 by the date on which the electoral roll was prepared in the year 1953. The nominations were filed on 3-1-1955 nearly 2 years afterwards. Therefore the Returning Officer added 2 years to the age shown in the Electoral Roll and presumed that the first respondent was more than 25 years of age. The fact that the electoral roll Ex. A-5 was prepared in the year 1953 is not denied. Thus in fact, the Returning Officer accepted the age as shown in the Electoral Roll and there is no room for the contention of the petitioner that he did not do so. The objection taken by the first respondent is that the decision of the Returning Officer accepting the nomination paper of the 1st respondent is final and it is not open for revision in this petition. Section 36 of the Representation of the People Act deals with the scrutiny of nominations. Under sub-section (7) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election for the purpose of this section. But the last sentence of this sub-section clearly shows that the right to contest the election can be questioned by proving that the candidate is disqualified under the Constitution or this Act. Section 81 of the Representation of the People Act gives a right for questioning the election by means of a petition presented to the Election Commission and the election may be questioned for any or all of the reasons mentioned in Sections 100 and 101 of the Act, one of the grounds on which an election can be sought to be set aside in noncompliance with the provisions of the Constitution or of this Act. Under Article 173 (e) of the Constitution, a person must be 25 years of age for contesting an election to the Legislative Assembly of the State. Therefore it is clear that the decision of the Returning Officer accepting the nomination paper is valid only so far as the scrutiny of nominations is concerned under Section 36 of the Act and the act of the Returning Officer can be questioned in a petition filed under Section 81 of the Act, for improper acceptance or rejection of any nomination paper as well as for noncompliance of any of the provisions of the Constitution or of this Act. In *Durga Shankar Mehta vs. Thakur Raghuraj Singh and others* the Supreme Court held that the decision of the Returning Officer is not final and the Election Tribunal may on evidence placed before it come to a finding that the candidate is not qualified at all. The first respondent's learned advocate has rightly not pressed this issue. Therefore no further discussion is necessary under this issue. We therefore hold that the acceptance of the nomination paper of the first respondent by the Returning Officer is not final and it is not binding on the petitioner.

8. *Issue 1.*—The most important question for consideration in this petition is whether the first respondent was not aged 25 years on the date on which he filed the nomination paper for this election *viz.*, 3rd January 1955. The contention of the petitioner is that the first respondent was born on 30th April 1931 and therefore he was under 25 years of age on 3rd January 1955 when he filed the nomination paper. If really the first respondent was born on 30th April 1931 he would be only 23 years 8 months and 3 days old on 3rd January 1955 and certainly he will not be qualified to be chosen or to fill a seat in the Legislative Assembly under Article 173 (b) of the Constitution. The first respondent is not definite as to the exact date of his birth. His contention is that he was born in a village called Koyida in Palwancha taluk in the Hyderabad State in the latter part of Fasli 1338. Fasli 1338 corresponds to the year 1928 and as such his contention is that he was born in the latter part of the year 1928 and on 3rd January 1955 he was nearly 27 years old.

9. The petitioner has adduced both oral and documentary evidence in support of his contention that the first respondent was under 25 years of age on the date of nominations. He has examined himself as P.W. 1 and two other witnesses P.Ws. 2 and 3 and has produced the original of the register of births relating to Kommuru village in Bhadrachalam taluk as well as an extract from it showing that the first respondent was born on 30th April 1931 in Kommuru village in Bhadrachalam taluk. Of course P.Ws. 1 to 3 have no personal knowledge relating to the birth of the first respondent. P.W. 2 is a clerk working

in the Taluk Office, Bhadrachalam. He produced the original register of births relating to Kommuru village marked herein as Ex. A-6. His evidence proves the proper custody of Ex. A-6. P.W. 3 was the Patwari of the Abhicherla group of villages from 1928 to February 1955. Mamillagudem, hamlet of Kommuru village which is admittedly the native place of the first respondent is in this group of villages. This witness maintained the register of births in Kommuru village and he wrote all the entries in Ex. A-6. According to him, the entry No. 8 marked separately as Ex. A-6(a) relates to the birth of the first respondent, that one Saylagadu, the village servant gave the information to the witness about the birth of the first respondent and the witness made the entry on the information given by this village servant. This village servant is now dead and his evidence could not be procured. The witness further deposed that the entries in Ex. A-6 were made in the usual course of his official duties and the register was sent to the Taluk Office for safe custody. Thus there is no doubt at all that both the custody as well as the entries in Ex. A-6 are clearly proved and the entry Ex. A-6(a) clearly relates to the first respondent. This entry shows that the 1st respondent was born on 30th April 1931, that his name was Seetharamayya, that his parents were Ramayya and Chilakamma and that he was a Hindu. These descriptive details relating to the 1st respondent are not disputed and it is not denied that Ex. A-6(a) related to the 1st respondent. What is contended is that the 1st respondent was born in Koyida village, his mother owing to illness stayed away with her parents for 2 years and then returned to Mamillagudem, her husband's place and that it was after her return the entry in Ex. A-6(a) would have been made. This is a far-fetched contention not supported by any reliable evidence. The evidence of R.Ws. 1 to 4 is too vague and unconvincing to rebut Ex. A-6(a).

10. Birth Registers are maintained according to the policy laid down by the Board of Revenue in its Standing Order No. 101. Births and Deaths are vital statistics collected by the State and these statistics are collected from so long ago as 1865 by the village officials. Collectors and Divisional Officers are directed to pay personal attention to the collection of these statistics and they are also directed to check these registers whenever they are on tour. The Register Ex. A-6 shows that it was verified and checked by several superior officers on 24th August 1931, 4th September 1931, 18th September 1931, 29th December 1931 and 10th January 1932. Thus Ex. A-6 is a register made by a public servant in discharge of his official duty and as such an entry in this register is admissible under Section 35 of the Indian Evidence Act. In *Devarapalli Ramalinga Reddi and others vs. Srigiriraju Kotayya and others* ^(*) it was held that a register of births and deaths kept by village officials under the orders of the Board of Revenue is a public document within the meaning of Section 35 of the Indian Evidence Act and an entry in such register regarding the death of a person is evidence of the actual date of his death. It is however contended on behalf of the first respondent that though registration of births and deaths was made compulsory under Act III of 1899, this Act was not extended to the Agency areas or to the District of East Godavari in which Bhadrachalam constituency lies and as such the Register Ex. A-6 is not an official register coming under the purview of Section 35 of the Indian Evidence Act. First of all there is no proof to show that Act III of 1899 was not extended to the East Godavari district or to Bhadrachalam taluk. Secondly even prior to Act III of 1899, one of the duties of the village officers was to collect vital statistics like births and deaths under the instructions of the Board of Revenue and the practice of collecting these statistics by the village officers was in vogue even from the year 1865. When certain registers are maintained on the instructions of the superior authorities like Board of Revenue, the registers must be deemed to have been maintained in the course of the official duties. Even if registration of births and deaths was not compulsory and even if Act III of 1899 was not extended to East Godavari district, we are of the view that the Register Ex. A-6 and the entries in it were maintained by a public servant in the course of his official duties. We are fortified in this view by the decision in *Phadkar vs. Pragi* ^(*) where it was held that in order that a document may be admissible under Section 35, it is not necessary that the public servant should be compellable by a legislative enactment to discharge the duty of preparing or keeping it. In the reported case an *abadi khasra* prepared by the amin when the Sub-Divisional Officer ordered a survey of cultivated area of the village at the instance of the *nazul* officer was held to be admissible even though the Land Revenue Act did not provide for preparation of the *khasra* for the *abadi*.

11. It is further contended on behalf of the 1st respondent that birth registers and extracts from birth registers are of very little probative value in

(*) I. L. R. 41, Madras 20

(*) A. I. R. 1935 Oudh 268.

evidence and our attention is drawn to 3 decided cases in support of this contention. The first is *Kalipada Das Karmarkar vs. Sashi Bhushan Majhi* ^(*) where it was held that if a register was prepared in a somewhat casual way, it is open to the Court to place no reliance on such a register when the question of the death of a person on a particular day is at issue. The second case is *Biseswar Misra vs. The King* where it was held the birth certificate does not prove itself and is no proof of age of any particular person unless the person connected with that entry either by making the entry or giving information comes forward and speaks to the entry and connects the entry with the individual concerned. The last case is in *Mallikarjuna Dugget vs. The Secretary of State for India in Council* ^(*). In this case a report made by the Tehsildar to the Collector was held not to be a public document coming under the purview of Section 35 of the Indian Evidence Act. We may state at once that none of the above decisions govern the facts of the instant case. The register Ex. A-6 is not a letter of correspondence as contemplated in *Mallikarjuna Dugget vs. The Secretary of State for India in Council* ^(*) nor was the register prepared in a casual way as contemplated in *Kalipada Das Karmarkar vs. Sashi Bhushan Majhi* ^(*). The decision in *Biseswar Misra vs. The King* ^(*) relates to the quantum of proof. According to it an entry in the birth register must be proved by the person who made it or by the person who gave the information. When such proof is given the entry in the register is accepted as proof of birth or death as the case may be. As required in this decision, the Patwari who made the entries in the birth register Ex. A-6 is examined as P.W. 3 and he swears that he made the entries on the information given by his village servant and that the entry relates to the first respondent.

12. The last contention of the first respondent in this connection is the entry Ex. A-6(a) in the birth register would not have been made on the day on which the child was born because the name of the child was also noted in Ex. A-6(a) and that it is not usual to name the child immediately after its birth. It may be the child is not generally named on the very day on which it is born. Even according to the evidence of R.W. 1, who is no other than the father of the first respondent, the 1st respondent was named 5 days after his birth. There is nothing wrong in making an entry in the birth register some days after the child is born giving the date on which it was born and its name on the information furnished by the village servant. Generally such information is furnished after a lapse of some days and we are of the opinion that merely because the entry was made a few days after the birth of a child, it would not affect the truth of the entry. Thus we are clearly of the view that the petitioner has adduced satisfactory evidence to show that the 1st respondent was aged less than 25 years on 3rd January 1955 when he filed the nomination paper for the election.

13. Now let us consider the evidence adduced on behalf of the 1st respondent and how far he has rebutted the evidence adduced on behalf of the petitioner. First of all as stated above, the first respondent is not definite as to the date on which he was born. He made a vague averment in his counter that he was born in Koyida village in Hyderabad State in the latter part of Fasli 1338. Secondly he felt shy of the witness-box and he has not examined himself as a witness in this petition and has not asserted that he was born in the latter part of Fasli 1338 and he was 25 years old on the date on which he filed the nomination paper. He has however examined 4 witnesses on his behalf viz., R.Ws. 1 to 4 in support of his contention that he was born in Koyida village in Hyderabad State. R.W. 1 is no other than the father of the first respondent. R.Ws. 2 and 3 are residents of Mamillagudem, hamlet of Kommuru in Bhadrachalam taluk and R.W. 4 is a resident of Koyida village in Hyderabad State. The evidence of R.Ws. 1 to 3 is that the first respondent was born in Koyida village in his maternal grandfather's house; that the mother and the child remained at Koyida for 2 years after the birth of the child and they came to Mamillagudem only 2 years after the birth. None of these three witnesses had personal knowledge about the alleged birth of the first respondent at Koyida. Even R.W. 1 who is his father has not visited Koyida village at the time of the birth or at the time of the christening ceremony of the 1st respondent 5 days after his birth. The evidence of R.W. 4 is not very the house of his maternal uncle. He was not able to say how many years back it was. Thus the evidence of R.Ws. 1 to 4 is very vague and it is not to the point. R.W. 1 the father of the first respondent says that he admitted the first respondent in Board School at Kunavaram. He must have necessarily given the date of the birth of his son when he admitted him in the school. He has not

(*) A. I. R. 1930 Calcutta 636

(*) A. I. R. 1949 Orissa 22

(*) 14 Indian Cases 401

attempted to get an extract from the Admission Register showing the age of his son. The first respondent also has not made any attempt to obtain an extract from the birth register of Koyida village. It is however elicited from R.W. 4 that there is no obligation for the village officers in Koyida village to report the births to higher authorities, but we are not prepared to accept this statement. Births and deaths being vital statistics there must be some instructions given to the village officers even in Hyderabad State to collect these statistics. We are therefore of the view that the evidence adduced on behalf of the 1st respondent is not at all satisfactory and it has not to any extent rebutted the evidence adduced on behalf of the petitioner. We, therefore, hold on issue 1, that the 1st respondent was not aged 25 years on the date on which he filed the nomination viz., 3rd January 1955 and as such he was not qualified to contest the election for the Legislative Assembly.

14. *Issue 4.*—In view of our finding under issue 1, the first respondent is under 25 years of age at the time of the filing of the nomination paper. He is consequently not qualified to be chosen to fill a seat in the Legislative Assembly of the State under Article 173(b) of the Constitution. In accepting the nomination of the 1st respondent, the Returning Officer has not complied with the provisions of the Constitution. When a person who is incapable of being chosen as a member of the State Assembly under the provisions of the Statute, but has nevertheless been returned as such, at the election, there is no doubt that there has been non-compliance with the provisions of the Constitution and that such non-compliance has materially affected the election. When the person whose nomination has been accepted, contrary to the provisions of the Constitution, is the returned candidate himself, the result of his election has undoubtedly been materially affected. He therefore comes under Section 100(2) clause (c) of the Representation of the People Act and his election has therefore to be declared void. We accordingly declare the election of the first respondent to be void.

15. *Issue 3.*—The petitioner not only asked to set aside the election of the first respondent, but he also prayed for a declaration that he was duly elected to the seat and that he should be seated in the Assembly as a successful candidate without a fresh election. In an election petition, 3 reliefs are contemplated under the provisions of the Representation of the People Act. The first is to declare the election to be wholly void and to unseat all the returned candidates; (2) to declare the election of the returned candidate alone to be void, and (3) to declare the election of the returned candidate to be void and to declare the petitioner or any other person that contested the election as duly elected in his place. This petition as stated above relates to a double constituency in which one of the seats is reserved for the scheduled tribes. The petitioner has not made the other returned candidate to the general seat as a party to the petition nor has he asked for the relief of setting aside the entire election. Therefore the question under what circumstances an election is "wholly void" need not be gone into in this petition. There is no doubt that a petitioner can ask for combined reliefs Nos. 2 and 3 mentioned above and cannot only ask for unseating the returned candidate but also for seating himself as duly elected candidate. In view of our finding on issue 1, the first respondent has to be non-seated and his election should be declared as void. But the other question for consideration is whether the petitioner can be declared as duly elected candidate and he should be seated in the Legislative Assembly straight away without facing a fresh election? For the latter purpose the petitioner's case must come either under clause (a) or clause (b) of Section 101 of the Representation of the People Act. The petitioner cannot come under clause (b) for it relates to the votes obtained by corrupt or illegal practices which are not alleged in this petition. Therefore he must necessarily come under clause (a) which relates to the majority of valid votes received by the candidate in the election. The Returning Officer declared the first respondent as the successful candidate because he obtained 27,600 valid votes at the polls, as against 12,400 valid votes secured by the petitioner. The margin between the two persons is a large one viz., 15,200 valid votes. The process of elimination contemplated under Section 101 is that after deducting the non-valid votes whoever gets the largest number of valid votes should be declared as the successful candidate. Therefore the short question for consideration is whether the petitioner got more valid votes than the first respondent.

16. The contention of the petitioner is that all the 27,600 votes declared as valid votes for the 1st respondent should be "thrown away" inasmuch as these voters voted for the first respondent knowing that he was disqualified under the Constitution being under-aged to contest the election. He averred in the petition

that the voters of the constituency knew fully well and had notice of the disqualification of the candidate because one Murram Buchanna Dora published a notice in *Andhra Patrika* on 11th February 1955 inviting the attention of the voters that the first respondent was under 25 years of age and as such he was not qualified to fill a seat in the Legislative Assembly under Article 173 (b) of the Constitution. What is a valid vote is not defined under the Act or the Rules made thereunder. Even under Chapter 5 of the Act which relates to the counting of the votes after the poll is over it is not defined what a valid vote is. The phrase "valid vote" is used only in Section 101 clause (a) and (b). However the Election Law in this country as well as in other countries has recognised that certain kinds of votes are not valid votes, for example, votes obtained by impersonation, votes obtained by corrupt and illegal practices and votes obtained by coercion or undue influence. To this list of non-valid votes a certain kind of votes known as "votes thrown away" is also added. Sri H. S. Doabia, the learned writer in his treatise on Law of Elections and Election Petitions at page 107 defined "votes thrown away" as follows:—If at an election a candidate has got some disqualification and he has been wrongfully allowed to contest, the question arises as to whether the votes cast in his favour should be wholly ignored when an enquiry is held in an Election Petition against the return. In such a case either the votes cast in favour of a disqualified candidate may be wholly ignored if certain conditions are fulfilled. The defeated candidate may be held to have got the majority of votes or the result of giving votes to a disqualified candidate may be that his election is set aside. In case notice of disqualification is given to the voter of the fact that the candidate is not a qualified candidate all votes cast in his favour subsequent to the notice will be considered to be void or as "thrown away." In a case relating to Bengal Legislative Council, viz., *Nawab Sir K. G. M. Farouqui vs. Maulvi Mohammad Habib Ullah and others* (7) the Election Tribunal of Bengal in its report dated 21st March 1945 laid down the conditions under which the votes polled for a successful candidate should be treated as "thrown away". The conditions are: (1) that the notice of the disqualification should be given to the voters; (2) it must be shown that the circumstances in which the voters voted even after notice were such as to lead to the fair inference of wilful perverseness on their part, and (3) it will not do if on the position notified to the voters, there was room for any ambiguity or doubt as to whether the candidate was really the candidate or not. The learned author Mr. Doabia further laid down that the notice of disqualification may be given to the voters either individually or collectively by means of a publication of the disqualification in a leading newspaper or by means of issuing pamphlets and posters showing the disqualification. It was further laid down in *Rogers on Election*, Volume II at page 80, that votes "thrown away" are votes polled to a candidate who is disqualified either after notice of his disqualification or with knowledge of the disqualification as they are to be considered the same as if the persons had not voted at all. It was further laid down that the effect of this is that the candidate next on the poll may on petition be declared elected, if after deducting the votes given after notice to the disqualified candidate, the latter is found to be in a minority. This variety of votes known as "thrown away" votes was also the subject matter of a decision of the Madras High Court in *Gopala Iyengar vs. Mahomed Ibrahim Rowther* 8. Therefore what we have to see in this case is whether all the 27,600 voters who cast their votes to the first respondent knew that the first respondent was disqualified being under-aged and in spite of their knowledge they voted for the first respondent in wilful perverseness.

17. As already stated the only fact averred in the petition in this connection was that one Murram Buchanna Dora published a notice in a Telugu daily paper called *Andhra Patrika* on 11th February 1955 inviting the attention of the voters to the fact that the first respondent was under 25 years of age being born on 30th April 1931; that he was not qualified to fill a seat in the Legislative Assembly under Article 173 (b) of the Constitution and that all the voters who voted for the first respondent belonged to the political party of the first respondent and they cast their votes in his favour knowing fully the age disqualification of the first respondent, but not heeding the same. In evidence the petitioner supplemented his averments shown above by leading evidence to show that the disqualification was made known to the voters in the constituency by means of house to house propaganda by the agents of the petitioner and also by means of propaganda carried through meetings held in several villages. In order to prove this aspect of his case the petitioner filed Miscellaneous Petition No. 5 of 1956 to re-open the case after the evidence was recorded and after it was posted

(7) The Indian Election cases, page 24.

(8) 90 Indian cases, 759.

for arguments. The petition was allowed and further evidence was recorded on both the sides. In this connection the petitioner examined himself as P.W. 1 and 8 other witnesses viz., P.Ws. 4 to 11. The petitioner examined as P.W. 1 stated that Murrum Buchanna Dora is a voter in this constituency, that he was present at the time of the scrutiny of the nominations, that he knew about the disqualification of the first respondent and he published this disqualification in the *Andhra Patrika* an extract of which is marked as Ex. A-7. He further stated that Buchanna Dora was one of his workers in the election. He added that in all the meetings held by him during the election campaign he told the voters that the first respondent was not eligible to contest the election due to his under-age. P.W. 4 is Murrum Buchanna Dora who is alleged to have published Ex. A-7 in the *Andhra Patrika*. He is a native of Rajavaram in Yellavaram taluk and his village is 2 miles away from the village of the petitioner. According to him, on the suggestion of a pleader at Rajahmundry, he published Ex. 7-A in the *Andhra Patrika* one month prior to the Sankranti festival (which usually falls in the middle of the month of January). He further stated that he did propaganda in the villages to the effect that the first respondent was under-aged and the vote given to him would be invalid and that he did such propaganda in about 100 villages. P.W. 5 is a resident of Fokespet in Chodavaram taluk. His evidence is that he heard people saying that the first respondent was below the age of 25 years and he was not qualified to stand as a candidate for the Assembly. He also added that he worked for the petitioner in the election and he did propaganda in the villages to the same effect. P.W. 6 is a merchant at Bhadrachalam town. His evidence is that on the date of polling at about 3 P.M. he learnt from the people that the respondent was under-aged. P.W. 7 is a ryot of Dummugudem, Bhadrachalam taluk. His evidence is that he is one of the subscribers to *Andhra Patrika* and that he read the publication Ex. A-7 in the *Andhra Patrika* and that he also canvassed for the petitioner in the elections in which he appraised the voters of 7 or 8 villages that the respondent was under-aged. P.W. 8 is a resident of Bhadrachalam. He stated that he worked for the petitioner in the election and that he did propaganda in the villages to the effect that the first respondent was under-aged and that the voters should not vote for him. He admitted that he did not read the publication in the *Andhra Patrika* but stated that he was present at the time of the scrutiny and knew the disqualification of the 1st respondent. P.W. 9 is a native of Bhadrachalam town. He was the President of the Taluk Congress Committee from 1947 to 1953. According to him, he canvassed for the petitioner in about 20 villages. He held meetings in which he proclaimed that the first respondent was disqualified and people should not vote for him. P.W. 10 is another resident of Bhadrachalam town. His evidence is that about 50 persons gathered at the place where the scrutiny was held, that all of them knew that the first respondent was under-aged and was disqualified, that the people at Bhadrachalam also knew about this, that he worked for the petitioner in the election and toured about 33 villages in Nugur and Bhadrachalam taluks and told about 30 to 35 thousand voters that the first respondent was disqualified. P.W. 11 is a resident of Dummugudem. According to him, he worked for the petitioner in the election and toured about 20 or 25 villages and told the voters that the first respondent was disqualified and they should not vote for him.

18. As against this, the first respondent examined 8 witnesses viz., R.Ws. 5 to 12. R.Ws. 5 and 6 are residents of Edara village in Nugur Taluk. Both of them stated that they exercised their vote in the last election at Albaka polling station and they never knew about the disqualification of the first respondent. The remaining witnesses R.Ws. 7 to 12 are natives of Bhadrachalam taluk belonging to different villages. They stated that they never knew that the first respondent was disqualified and there was no propaganda done on behalf of the petitioner in this respect. Among these witnesses R.W. 11 however admitted in his cross-examination that he read in a newspaper that the respondent was under-aged and thereby disqualified to stand for the election and that everybody knew about this after it was published in the newspaper. He further admitted that he read Ex. A-7 and a similar publication in the other newspapers after the polling was over.

19. The oral evidence adduced in this connection is equally divided. All the witnesses examined in this connection on behalf of the petitioner were sympathisers of the petitioner and they worked for him in the election. Their evidence therefore must be treated as highly interested. The evidence adduced on behalf of the 1st respondent is of course negative in nature and it shows that most of the voters did not know about the disqualification of the first respondent. This constituency is a double member constituency and admittedly there are more than one lakh of voters in the constituency. About 50,000 voters exercised their franchise and the first respondent succeeded in the election by a huge majority.

of about 15,000 votes. The constituency consists of 4 revenue taluks far flung in the hilly tracts of the Agency area. The population in this constituency consists of mainly tribesmen who are totally illiterate. According to the evidence there is only one per cent. literacy in the population of this area. In view of these circumstances, the stray witnesses examined by the petitioner cannot in our opinion show that the large section of the electorate knew about the disqualification of the first respondent. If the petitioner wants to succeed he must show that more than 15,200 voters knew about the disqualification and still they voted for the first respondent wilfully and perversely. There is no doubt, that the disqualification of the 1st respondent was published in one of the Telegu dailies viz., *Andhra Patrika* dated 11-2-55 as evidenced by Ex. A-7 but the question is whether this paper *Andhra Patrika* is read by a large section of the voters of this constituency. First of all there is no reliable evidence to show how many issues of *Andhra Patrika* were in circulation in this constituency. If the petitioner was really serious about this allegation, he could have easily summoned an official from the office of the *Andhra Patrika* and showed how many issues of this paper were in circulation in this area. This omission clearly shows that only a few issues of this paper must have been in circulation. Having regard to the hilly nature of the country and also the backward nature of the population and the low percentage of the literacy we are of the opinion that the publication Ex. A-7 in *Andhra Patrika* would not have been known to more than a few voters. As stated above, the petitioner has not clearly avered in his petition that door to door propaganda was done among the electorate appraising them about the disqualification of the first respondent. Nor did he aver that election meetings were arranged and in these meetings the electors were appraised about the disqualification of the first respondent. Apart from the fact that these two modes of propaganda are belated introductions in evidence, there is no sufficient proof that the petitioner or his agents did propaganda in the above manner. In elections like this, one of the known methods of propaganda widely used is publication of posters or pamphlets or leaflets and distribution of the same throughout the electorate bringing to the notice of the voters the qualifications or disqualifications of a particular candidate. It is admitted that in none of the posters or pamphlets used for propaganda in this case the disqualification of the 1st respondent was mentioned. As already stated the oral evidence is meagre and it is also interested. The solitary documentary evidence is Ex. A-7 and we are of the view that this publication would not have reached more than a handful of literate voters in the constituency. Therefore taking the entire evidence as a whole, the circumstances and the probabilities of the case and the peculiar features of this constituency into consideration, we are unhesitatingly of the view that most of the voters in this constituency are not aware of the disqualification of the first respondent and they did not wilfully or perversely poll their votes for the first respondent knowing that he was disqualified. As a result we hold that the 27,600 valid votes cast in favour of the first respondent or any portion of these votes cannot be said to be "thrown away" and the petitioner cannot be declared as duly elected. Issue 3 is found accordingly.

20. Issue 5.—As a result of our findings on the foregoing issues, we allow this petition in part holding that the election of the returned candidate viz., the first respondent is void but decline to declare the petitioner as the duly elected candidate and direct that a fresh election be held for the reserved seat for the Scheduled Tribes in the Bhadrachalam Constituency of the Andhra Legislative Assembly as expeditiously as possible. In regard to costs as the first respondent has substantially failed in the petition, we direct that he should pay a consolidated sum of Rs. 250/- by way of costs to the petitioner.

Pronounced in open Court, this 21st day of March 1956.

G. NAGIREDDI, Chairman,

C. NARASIMHACHARYULU, Member (Judicial)

M. SITARAMAIAH, Member (Advocate)

[No. 82/5/55]

By Order,

P. S. SUBRAMANIAM, Secy